In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.3094 of 2004.

Date of decision:

Joginder Singh.

...Appellant.

Versus

Harbhajan Singh and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice S.N.Aggarwal.

...

Present: Mr.Malkiat Singh Advocate for the appellant.

Mr.Padam Jain Advocate for respondent No.1.

...

Judgment.

S. N. Aggarwal, J.

Elections for the office of Panch of Gram Panchayat of villager Barriar,Tehsil Bholath, District Kapurthala had taken place on 29.6.2003. Joginder Singh appellant and Harbhajan Singh respondent had contested the elections. Joginder Singh was declared elected. Thereafter, Harbhajan Singh respondent filed the election petition challenging the election of Joginder Singh as Panch of Gram Panchayat of village Barriar on the ground that his nominations papers were illegally accepted because said Joginder Singh was in illegal possession

of the land owned by Gram Panchayat of village Barriar comprised in Khewat No.645, Khatauni No.707, Khasra No.57(2Kanals -2 Marlas). This land was Hadda Rori but Joginder Singh respondent had encroached upon this land and has constructed his house in the site in dispute. Joginder Singh being in unlawful possession of the panchayat land was dis-qualified to be chosen as Panch of Gram Panchayat of his village.

Joginder Singh appellant filed the written statement and pleaded preliminary objections. He denied if he was in illegal possession of any land owned by Gram Panchayat of village Barrier.

Issues were framed.

Harbhajan Singh respondent examined himself as PW-1 and repeated on oath that Joginder Singh son of Kartar Singh of his village was in illegal possession of land measuring 2 Kanals 2 Marlas which was Hadda Rori and,therefore, Joginder Singh was dis-qualified. He also produced Jamabandi for the year 2001-02, Exhibit P-1 and a copy of plaint was produced as Exhibit P-2. He also proved copy of FIR No.214 dated 1.12.2003, under Section 7(13)(a) of the Punjab Village Common Lands (Regulation) Act, 1961 registered against Joginder Singh for illegal possession of this very land.

On the other hand, the appellant did not lead any evidence.

The learned Election Tribunal accepted the election petition vide impugned order dated 26.5.2004 and set aside the election of Joginder Singh,appellant and Harbhajan Singh, respondent No.1 was

declared elected as a Panch.

Hence the present appeal by Joginder Singh,appellant.

The learned counsel for the appellant made reference to the provisions of Section 78(1)(C) of the Punjab State Election Commission Act, 1994 (in short PSEC Act of 1994) and submitted that the election petition was required to be signed and verified by respondent No.1 in the manner laid down in the Code of Civil Procedure,1908 for verification of the pleadings.

The learned counsel for the appellant further submitted that election petition was not verified by respondent No.1 as required by this Code and,therefore, it was liable to be dismissed. In support of this submission, reference was made to the judgment of the Hon'ble Supreme Court reported as **Regu Mahesh @ Regu Maheswar Rao Versus Rajendra Pratap Bhanj Dev and another,** 2003 (4) Recent Civil Reports (Civil) page 830 in which parallel provision in Representation of People Act, 1951 was discussed by the Hon'ble Supreme Court.

This submission has been considered. We may notice the requirements of law about verification contained in Order 6 Rule 15 C.P.C. It reads as under:-

> “15. Verification of pleadings.-(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to

the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3). The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4). The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

However, in the present case, the verification in the election petition is neither vague nor uncertain. It reads as under:-

"Verification.

Verified that the contents given in para No.1 to 10 above are true and correct to the best of my knowledge and belief.

Verified at Kapurthala dated 13/8/03."

In verification, Harbhajan Singh respondent has made reference to para Nos.1 to 10 of the election petition. These are the only paras of the election petition. It is signed and verification is also signed. He also deposed that this information was true and correct to the best of knowledge and the same was believed to be true.

Therefore, there does not appear to be any legal defect in the verification of the election petition.

However, in **Regu Mahesh** case (supra), the Hon'ble Supreme Court was pleased to observe that verification was not made in accordance with the statutory requirement. It reads as under:-

> "As sub-rule (2) of Rule 15 prescribes that a person making a verification is required to specify by reference to the numbers of paragraphs of the pleadings what he believes on his own knowledge,and what he reveals upon information received and believed to be true. This admittedly has not been done in the present case".

It was further observed by the Hon'ble Supreme Court in **Regu Mahesh** case (supra) as under:-

> "The casual approach of the appellant is not only visible from the manner in which verification was done, but also from the fact that he has mentioned two different districts to which he claims to be belonging. The explanation that the same was given by mistake is too shallow when considered in the background that he is stated to be a practicing advocate. An advocate is supposed to know the importance of verification and the desirability of making statement of correct facts in any petition and more in case of an election petition. An election petition is intended to bring to focus any illegality attached to an election. It essentially and basically puts a question mark on the purity of election, casts doubt on fairness thereof and seeks a

declaration that mandate of people has been obtained by questionable means. In a democracy the mandate has sacrosanctity. It is to be respected and not lightly interfered with. When it is contended that the purity of electoral process has been polluted, weighty reasons must be shown and established. The onus on the election petitioner is heavy as he has to substantiate his case by making out a clear case for interference both in the pleadings and in the trial. Any casual, negligent cavalier approach in such serious and sensitive matter involving great public importance cannot be countenanced or glossed over too liberally as for fun."

In the reported judgment, the verification was not in accordance with the statutory requirement,but, in the present case, no fault can be found with the verification given by respondent No.1, therefore, the judgment relied upon the learned counsel for the appellant is not applicable to the facts of the present case.

The next submission of learned counsel for the appellant was that in the Jamabandi Exhibit P-1, it is no where shown if the land measuring 2 Kanals 2 Marlas was in illegal possession of the appellant. Therefore, Jamabandi Exhibit P-1 does not affect the right of the appellant to contest the elections of Panch of village Barriar. It was also submitted that the suit which he had filed was got dismissed as withdrawn by him and,therefore, that also did not affect him. It was

also submitted that he was found innocent during the investigation in the case registered at FIR No.214 dated 1.12.2003 (Annexure P-3). Hence,it was submitted that he was not disqualified from contesting for the office of Panch.

Before proceeding further, we may examine the statutory provision according to which a person is disqualified from contesting elections as a Panch or Sarpanch of a gram panchayat. Section 208(1)(k) of the Punjab Panchayati Raj Act, 1994 (in short PPR Act, 1994) lays down that a person shall be disqualified for being chosen as and for being a member of a Panchayat if he is in unauthorised occupation of the property belonging to any local authority. Local authority as defined in Section 2(ze) of the said Act includes gram panchayat.

Jamabandi, Exhibit P-1 shows that Khewat No.645, Khatauni No.707, Khasra No.57(2 Kanals 2 Marlas) is owned by Nagar Panchayat. The copy of the plaint,Exhibit P-2 also reveals that the appellant along with Nirmal Singh had filed a civil suit for permanent injunction in which Gram Panchayat of village Barriar was impleaded as respondent No.2. Joginder Singh, appellant as plaintiff in that suit had pleaded that that shop Nos.1 and 2 constructed on the land measuring 2 Marlas was a part and parcel of land bearing Khewat No.645, Khatauni No.707, Khasra No.57(2K-2M) situated in village Barriar and it was in peaceful and continuous possession of the plaintiff/appellant and Nirmal Singh and they sought protection of the court against their dispossession by the Gram Panchayat. This suit was

filed by Joginder Singh appellant along with Nirmal Singh on 7.3.2003 i.e. about three months before the elections for the office of Panch of Gram Panchayat Barriar took place. Even if the appellant had withdrawn that civil suit that does not wash away the documentary evidence and the admission made by Joginder Singh,appellant that he was in possession of a part of the land which was owned by the Gram Panchayat of village Barriar.

The version of the appellant that the suit was filed by Nirmal Singh or that his signatures were obtained by mis-representation etc. is of no consequence. The civil suit was filed by him along with Nirmal Singh and on the face value whatever was alleged in the plaint was correct and the observations were made by the learned trial Court while disposing of the application for interim stay that the possession of plaintiff-appellant Joginder Singh was illegal and he has illegally constructed the shop over the land belonging to the panchayat.

It was not disputed that the appellant was one of the accused in a case registered at FIR No.214 dated 1.12.2003 for being in illegal possession of the suit property. It is a different matter that the appellant has been kept in column No.2 or that he was found innocent by the police.

Moreover,the appellant did not appear even as a witness to rebut the evidence led by Harbhajan Singh,respondent No.1 which proved that the appellant was in illegal possession over a part of suit property owned by Gram Panchayat Barriar.

Keeping in view the discussion held above, it is held that Joginder Singh was in unauthorised possession of part of land owned by the Gram Panchayat. Therefore, the order passed by the Election Tribunal does not suffer from any illegality or infirmity.

There is no merit in the present appeal and the same is dismissed.

November ,2006. (S. N. Aggarwal)
Jaggi Judge